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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Prompt Payment Act Interest on Utility Bills

File: B-214479

Date: September 22, 1986

DIGESTS

1. The Army should include Prompt Payment Act interest penalties when it makes late payments to public utility companies that do not have a tariff-authorized late charge. The Act requires that interest penalties be added to late payments made to "any business concern." Utilities are not excluded from the definition of this term. Our decision in 63 Comp. Gen. 517 (1984) concerned a public utility which had adopted tariff-authorized late charges and other express payment terms. We held only that, just as is the case with other contractors, such express terms take precedence over provisions in the Act which were intended to provide contractors with a substitute penalty when none was provided in the contract.

2. The Army's payment as a result of this decision of interest owed on utility bills should include compound interest as required by section 3902(c) of title 31.

DECISION

An Army Finance Officer asked for an advance decision on the propriety of paying Prompt Payment Act (Act) interest penalties on late payments for telephone services in states where the applicable tariff approved by the public utility commission does not provide that the telephone supplier may assess late charges against its customers. The Act, codified at 31 U.S.C. §§ 3901-06 (1982), defines late payments and imposes interest penalties on all such payments made by the Government. We conclude that the payments inquired about fall within the statutory parameters, and are subject to statutory penalties. A second question in the request, regarding the computation of tariffed late charges should be resolved by the cognizant state regulatory bodies, not this Office.

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SCOPE OF THE ACT

A tariff approved by the state utility commission constitutes the contract for services between a regulated public utility and its customers (including the Federal Government). State public utility commissions generally regulate the rates charged to consumers to insure that the utility recovers its costs plus a specified return on investment and to protect consumers from possible overcharging by a state-chartered monopoly. Most tariffs authorize a late payment charge to compensate the utility for the extra costs associated with delayed payments. This Office first held more than 10 years before enactment of the Prompt Payment Act that the terms of a regulated public utility's approved tariff constitutes the terms of a contract for service, including tariffed late charges, and therefore such late charges were properly payable, 51 Comp. Gen. 251 (1971).

Recently, we analyzed the relationship between the Prompt Payment Act's interest penalties and tariffed late charges of public utilities in 63 Comp. Gen. 517 (1984). We held that the Act was not intended to supplant existing contractual requirements for late payment charges or interest, but rather to provide a statutory right to recover late payment interest when the contract itself did not provide for such payments. Accordingly, we found that tariffed payment terms must be complied with strictly.

The GSA temporary regulations incorporating the requirement of the Act into the Federal Procurement Regulations mirrored our decision. They exempted public utility contracts with tariffed late charges from the application of the terms and conditions for late payments specified in the Act. 41 C.F.R. Part 1-29 (1983) (expired). The regulations also took the same position as did our decision that tariffed late charges were payable in lieu of, not in addition to, Prompt Payment Act interest penalties. See 63 Comp. Gen. at 519.

The question before us now, however, is whether Prompt Payment Act interest penalties are applicable to late payments made to public utilities when the approved tariffs do not provide for or require the use of a specific late charge. Our earlier case did not deal with this situation.

The Act defines a "business concern" as "a person carrying on a trade or business." Using the same broad determination of "person" as is found in Federal procurement statutes and regulations, we have no doubt that the term covers both individual and corporate suppliers of service. The Act then goes on to provide:

"* * * the head of an agency acquiring property or service from a business concern, who

does not pay the concern for each complete delivered item of property or service by the required payment date, shall pay an interest penalty to the concern on the amount of the payment due.* * *" 31 U.S.C. § 3902(a).

The Act also specifies that the required payment date is the date set forth in the contract or, if no due date is specified, 30 days after receipt of a proper invoice. 31 U.S.C. § 3903(1). For service contracts such as those under discussion here, the Act further establishes a 15-day grace period after the due date during which interest is calculated but is not paid. If payment occurs after the grace period expires, interest is due from the day after the due date until payment is made. 31 U.S.C. § 3902(b)(3).

Thus, the Government is obligated to add interest to all its overdue bills following the contract or tariff terms, if any, or the terms of the Prompt Payment Act, discussed above. There are no exceptions in the statute based on the nature of the service acquired or the type of industry providing it.

The legislative history of the Act also supports a conclusion that the interest penalty applies without exception. In addition to compensating vendors for the cost of delayed payment, a corollary purpose of the Act was to encourage timely remittance and ultimately change the Government's reputation as a slow payer. See H.R. Rep. No. 461, 97th Cong., 2d Sess. 1, 8.

Considering the plain meaning of the statute and its legislative history, we find that the Army should add interest penalties to invoices for telephone service when it pays more than 15 days after the invoice due date and there is no tariff authorized late charge.

COMPUTING INTEREST OWED

At the same time the Army requested an advance decision, the Finance Officer informed the affected telephone suppliers that the Army would continue to pay its bills, but would decline to add interest penalties until advised to do so by the Comptroller General. Since we are now advising that interest should be paid, the Army Finance Officer has asked informally how much is owed.

As we indicated above, if payment is not made during the 15-day grace period, the interest penalty accrues from the day after the due date until the day payment is made. 31 U.S.C. § 3902(b). Interest shall be computed at the rate established by the Secretary of the Treasury for interest payments under the Contract Disputes Act. Id. at 3902(a).

The Act generally requires the compounding of interest at 30-day intervals. Subsection 3902(c) provides:

"An amount of an interest penalty unpaid after any 30-day period shall be added to the principal amount of the debt, and a penalty accrues thereafter on the added amount."

(Emphasis added.)

OMB Circular A-125, the implementing regulation for the Prompt Payment Act, clarified the compound interest requirement as follows:

"When an interest penalty that is owed is not paid, interest will accrue on the unpaid amount until paid." 47 Fed. Reg. 37321, 37323.

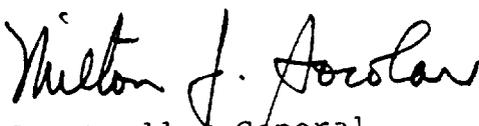
The OMB Circular makes it clear that § 3902(c) should be interpreted as requiring compound interest on the Army's unpaid interest. The amount of interest owed at the time each invoice was paid should be calculated, and compounded thereafter at 30-day intervals for 1 year or until payment. Payment is naturally subject to the availability of funds from the appropriate fiscal year.

COMPUTATION OF TARIFFED LATE CHARGES

A second question submitted with the request involves late charges authorized by tariff but assessed on the basis of the monthly total billing by telephone utilities. The question arises because companies which provide only local telephone services frequently collect long distance and other telecommunications billings for the company which provides those services. The tariffed late charge is then assessed based on the combined billings of the two companies. The Army does not question whether the late charge should be paid. Rather it questions the late charge being assessed on the combined billings.

Our Office is not the appropriate forum in which to decide this question. We held in 63 Comp. Gen. 517 (1984) that it is the tariff which constitutes the agreement between the parties. If this billing practice has the approval of the state public utility commission (which we assume it does in those situations where late charges are assessed on combined billings), the Army is constrained to abide by it. It follows then that the proper place to contest the reasonableness

of this billing practice is the cognizant state regulatory
body.

for 
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